In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 845

ERNEST TIPPETT AND CHARLES ELLIS WILLIS,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on November 22, 1965. On December 23, 1965, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to January 4, 1966, and the petition was filed on December 23, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

790-423—66

QUESTIONS PRESENTED

1. Whether, under Section 2315 of the Criminal Code (which punishes the receipt in interstate commerce of stolen goods having a value of more than $5,000), value is to be determined as of the time and place of theft, rather than the time and place of receipt.

2. Whether the trial court correctly rejected the testimony of a witness, called by petitioners, who based his estimate of value on a price list of a company that did not operate in the State of the theft.

3. Whether the evidence established that the stolen goods were in interstate commerce when petitioners received them.

STATUTES INVOLVED

18 U.S.C. 2315 provides in pertinent part:

> Whoever receives, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise securities, or money of the value of $5,000 or more, * * * moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken;
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> * * * * *
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> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

18 U.S.C. 2311 provides:

> "Value" means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof.

STATEMENT

Petitioners were convicted in the United States District Court for the Western District of South Carolina of the knowing receipt of stolen goods having a value of more than $5,000 and moving as interstate commerce (18 U.S.C. 2315). Petitioner Tippett was sentenced to imprisonment for seven years and petitioner Willis to imprisonment for five. The evidence showed that Tippett, who operated a service station in Greenville, South Carolina, told one Greer in February 1962 that he wanted some tires, and Greer said he would look for them (R. 6). Greer and his accomplices stole approximately 265 Atlas tires from the American Oil Company (Amoco) in Gainesville, Georgia, and carried them back to Greenville in a rented truck on a Sunday afternoon (R. 7–8). Within half an hour of his return, Greer told Tippett that he had the tires (R. 8). That night, Greer and Tippett agreed on a price, and the tires were moved to Tippett's service station (R. 8). On Monday night, petitioners and Greer, under cover of darkness, moved the tires to a storage place in a nearby town. Both petitioners paid Greer for the tires, and both knew where they had been stolen (R. 13–14). The owner of the tires testified that their retail value was more than $9,000, their wholesale price more than $6,000, and the cost to him as a jobber more than $5,500 (R. 60–64).

Petitioner offered the testimony of a tire dealer in Georgia (R. 72–78; Pet. 11–16), who referred to a 1962 price list of Esso (Standard Oil Company) for Atlas tires and stated that Esso had been the

only outlet for such tires in South Carolina at the time (Pet. 11–12). He testified that Esso did not operate in Georgia, and that he did not know the price at which Atlas tires were selling to dealers in Georgia at the relevant time (Pet. 14–15). He stated that Esso operated on a cost-plus basis but he could offer no information as to Amoco (Pet. 15). In these circumstances, the court excluded his testimony as irrelevant, observing that it was common knowledge that "in different places in the country and through different sources, you pay different prices." (Pet. 16.)

ARGUMENT

The decision below is clearly correct, and there is no conflict with any other circuit. Accordingly, further review is not warranted.

1. Although at trial petitioners did not question the assumption of the trial judge and the government that the value specified in Section 2315 must be determined as of the time and place of the theft, on appeal they argued that the relevant time and place was that of receipt. While, as the court below noted, there are no decisions on this precise issue, it has been uniformly held with respect to offenses under Section 2314 of the Criminal Code—a companion provision which punishes the transportation of stolen goods—that the stolen goods are to be valued at the time and place they were stolen. *Herman* v. *United States,* 289 F. 2d 362, 366 (C.A. 5), certiorari denied, 368 U.S. 897; *Husten* v. *United States,* 95 F. 2d 168, 171 (C.A. 8). We do not understand petitioners to challenge the correctness of these decisions; and if

they are correct, surely the test they apply equally governs Section 2315, the provision here in suit, since it would be completely anomalous to punish the thief and the receiver under different standards. Sections 2314 and 2315 are complementary provisions of the National Stolen Property Act, and, as the court of appeals pointed out, "two different standards * * * might complicate joint trials involving thieves, transporters, receivers and sellers of such property in elaborate interstate transactions" (Pet. App. A19), and in some cases might lead to a division of criminal jurisdiction over a single transaction between State and federal courts.

2. It is clear from the record that the trial judge rejected the testimony of petitioner's witness, not merely because he was testifying as to prices in South Carolina, but because he wished to testify about a distribution system that did not even operate in the place of theft at the time in issue. The witness based his testimony on a price list of Esso—which, he admitted, did not do business in Georgia—and expressly stated that he had no knowledge of how Amoco, from which the tires were stolen, set prices. The trial judge correctly pointed out that the retail price of the tires could well vary with the distributor, as well as with the place of sale.

3. Petitioners' contention that the evidence did not show that the tires were moving as commerce at the time of receipt is without merit. The evidence was that Greer was asked by Tippett to get tires; that within a half hour of bringing the tires stolen in Georgia to South Carolina, Greer reported back to

Tippett; and that the tires were brought to Tippett's service station that very night, and removed to a hiding place the next day. The tires were thus moving in interstate commerce at the time petitioners received them. See *Corey* v. *United States*, 305 F. 2d 232, 236 (C.A. 9), certiorari denied, 371 U.S. 956, and cases there cited.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JANUARY 1966.

U.S. GOVERNMENT PRINTING OFFICE: 1966